



PROJECT AGREEMENT
BETWEEN
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AND
THE CITY OF WAUKEGAN

The United States Environmental Protection Agency (U.S. EPA), represented by the Great Lakes National Program Office (GLNPO), and the City of Waukegan (the Non-Federal Sponsor), represented by Mayor Richard Hyde, are entering into this Project Agreement (Agreement) to conduct the Remedial Design of the Waukegan Harbor Sediment Remediation Project, in Waukegan, Illinois (Waukegan Harbor RD).

The Waukegan Harbor RD Project, as defined in Paragraph 1.g of this Agreement, is a qualified Project under the Great Lakes Legacy Act of 2002, codified as amended at 33 U.S.C. § 1268(c)(3)(12)(B)(i) *et seq.* This Project will complete a sediment evaluation Project to finalize the engineering design and develop plans and specifications for the remediation of PCB contaminated sediments in the Waukegan Harbor Area of Concern, Illinois. This Project is described more completely in the attached Statement of Work and Attachment 1 thereto (the "Work"). This Project to complete the RD is to be carried out within the Waukegan Harbor Area of Concern, which is wholly within the United States. It is the goal of this engineering design, and the potential subsequent remediation project, to address all sediment related BUIs within the Waukegan Harbor AOC. The signatories will work with all appropriate entities to finalize delisting targets for the AOC and attempt to ensure that the potential sediment remediation project addresses the sediment related BUIs to the extent possible, and that the appropriate international, federal, state, and local agencies are working to address all other BUIs within the Waukegan AOC.

33 U.S.C. § 1268(c)(12)(E) specifies the cost sharing requirements applicable to the Project. These requirements include, but are not limited to: maintaining aggregate expenditures in the area of concern where the Project is located, requiring the Non-Federal Sponsor to maintain its aggregate expenditures from all other sources for remediation programs in the area of concern where the Project is located, and requiring the Non-Federal Sponsor to enter into a written agreement to furnish its required cooperation for the Project or Project element.

GLNPO and the Non-Federal Sponsor have the authority and capability to perform as set forth in this Agreement for the Total Project Costs and intend to cooperate in cost-sharing and financing of the Project according to the terms of this Agreement.

GLNPO and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a "partnering" strategy and a working relationship through a mutually developed formal strategy of commitment and communication which creates an environment where trust and team work prevent disputes, foster a cooperative bond, and facilitate completion of a successful project.

NOW, THEREFORE, GLNPO and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

1. For purposes of this Agreement:

- a. "Article" means a portion of this Agreement identified by roman numeral.
- b. "Fiscal year" means one fiscal year of GLNPO. The GLNPO fiscal year begins on October 1 and ends on September 30.
- c. "GLLA" means the Great Lakes Legacy Act of 2002, as amended and codified at 33 U.S.C. § 1268(c), P.L. 107-303, Section 101, *et seq.*
- d. "In-kind contributions" means the value, as established by GLNPO, of Project related goods and services provided by the Non-Federal Sponsor including, but not limited to: labor provided by the Non-Federal Sponsor employees, contractors or consultants, construction of Project elements, construction materials, equipment, design or engineering services, laboratory services and staff charges.
- e. "Non-federal proportionate share" means the ratio of the Non-Federal Sponsor's total cash contribution required according to Paragraphs 5 and 19 of this Agreement to total financial obligations for the Project, as projected by GLNPO.
- f. "Paragraph" means a portion of this Agreement identified by Arabic numeral.
- g. "Project" means work set forth in the attached Statement of Work and the attachments thereto, which is attached hereto and incorporated by reference, and which generally consists of all actions required to produce final bid documents for implementing the Waukegan Harbor Sediment Remedial Action, including: 1) development and review of a preliminary design documents, 2) development and review of final engineering design document and cost estimates, 3) development and review of final bid documents, including final plans and specifications, 4) development of applications for all permits and variances required by the Project, and 5) public outreach efforts associated with the above activities.
- h. "Project period" means the time from the date the Project Agreement becomes effective to the date that the GLNPO Project Manager notifies the Non-Federal Sponsor in writing of GLNPO's determination that the Project is complete or is otherwise terminated.
- i. "Removal" means eliminating an obstruction (other than a bridge over the navigable waters of the United States) where GLNPO determines, after consulting the Non-Federal Sponsor, that: 1) elimination is necessary for the construction, operation, and maintenance of the Project, including the borrowing of material or the associated disposal of dredged or excavated material; 2) elimination must be accomplished before the end of the Project period; and 3) the Non-Federal Sponsor, the State of Illinois, or GLNPO has the legal capability to eliminate the obstruction at the expense of the owner or operator.

j. "Total Project Costs" means all costs incurred by the Non-Federal Sponsor or GLNPO according to this Agreement that are directly related to the work on the Project and to not exceed \$400,000. Subject to this Agreement, the term includes, but is not limited to: the value of the Non-Federal Sponsor's in-kind contributions; GLNPO's engineering and design costs during the Project including Remedial Investigation and Feasibility Study activities; investigation costs to identify the existence and extent of hazardous substances; actual Project costs; GLNPO's costs of contract dispute settlements or awards; and audit costs pursuant to Paragraphs 25 and 26 of this Agreement.

ARTICLE II - OBLIGATIONS OF GLNPO AND THE NON-FEDERAL SPONSOR

2. GLNPO, subject to receiving funds appropriated by the United States Congress and using those funds and funds provided by the Non-Federal Sponsor, shall conduct the Project, applying those procedures usually applied to Clean Water Act Projects, pursuant to federal laws, regulations, and policies.

3. a. Throughout the Construction Period, the GLNPO Project Coordinator and the Non-Federal Sponsor shall arrange to have the U.S.EPA contractor, and the contractors of the Non-Federal Sponsor, furnish each party with monthly progress reports.

b. Notwithstanding paragraph 2 of this Agreement, if the award of any contract for constructing the Project would result in Total Project Costs exceeding \$400,000, GLNPO and the Non-Federal Sponsor shall defer award of that contract and all subsequent contracts for Project construction until they agree to proceed with further contract awards, but in no event shall the contract awards be deferred for more than 9 months. Notwithstanding this general provision for deferring contract awards, GLNPO, after signing a modification to this Agreement that has been negotiated in good faith with the Non-Federal Sponsor to increase the Total Project cost limit in this paragraph, may award a contract or contracts after the Director of GLNPO determines in writing that the award of the contract or contracts must proceed to comply with law or to protect human life or property from imminent and substantial harm at the prescribed cost share.

4. The Non-Federal Sponsor shall provide quarterly reports and maintain financial management systems as follows:

a. The Non-Federal Sponsor shall submit quarterly reports beginning with the first full three-month period after the effective date of this Agreement. The quarterly report shall, at a minimum, include a summary of work accomplished in the previous quarter on each element of the Project, a current schedule for work and other milestones, and a discussion of costs incurred to date with an attribution of the funding source (federal or non-federal) and percentage of the Non-Federal Sponsor's costs paid by the Non-Federal Sponsor to date. For the

Non-Federal Sponsor's portion of the costs, the costs shall be broken down into the following categories: direct costs (personnel, contract, equipment) and indirect costs.

b. The financial management systems of the Non-Federal Sponsor must meet the following standards:

(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made according to the financial reporting requirements of this Agreement.

(2) Accounting records. The Non-Federal Sponsor must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal control. Effective control and accountability must be maintained for all Project Agreement cash, real and personal property, and other assets. The Non-Federal Sponsor must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget control. For each Project Agreement, the Non-Federal Sponsor must compare actual expenditures or outlays with budgeted amounts. Financial information must be related to performance or productivity data, including developing unit cost information whenever appropriate or specifically required in the Project Agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable cost. OMB cost Circular A-87 and the terms of this Agreement will govern in determining the reasonableness, allowability, and allocability of costs.

(6) Source documentation. The Non-Federal Sponsor's accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract award documents, etc.

5. The Non-Federal Sponsor shall contribute a share of the Total Project Costs which are not to exceed \$400,000 as follows:

a. GLNPO will project, based on the information provided by the Non-Federal Sponsor, the Total Project Costs.

b. GLNPO will project the value of the in-kind services provided by the Non-Federal Sponsor. In-kind services can include, but are not limited to the following:

(1) Lands;

(2) Equipment; and

(3) Labor.

c. If the value of the projected in-kind services is less than 35 percent of the Total Project Costs, the Non-Federal Sponsor shall provide an additional cash contribution or additional in-kind contributions, pursuant to Paragraph 15, in the amount necessary to make its total contribution equal to 35 percent of total costs of the Project. If the value of the in-kind contributions for the Project exceeds 35%, and the PA is subsequently amended to include additional work, the in-kind contributions that exceed 35% of the original work under the PA can be considered in calculating the cost share for the Amended PA.

6. GLNPO shall perform a final accounting according to Paragraph 18 to determine the value of the Non-Federal Sponsor's contributions under this Agreement to determine whether the Non-Federal Sponsor has met its obligations under GLLA.

7. The Non-Federal Sponsor shall not use federal program funds to meet any of its obligations for the Project under this Agreement. The Non-Federal Sponsor must make a one-time demonstration at the signing of this Agreement that it will maintain its aggregate expenditures from all other sources for remediation programs in the area of concern in which the Project is located at or above the average level of such expenditures in the two fiscal years preceding the date of Project initiation.

8. The Non-Federal Sponsor certifies that Non-Federal Sponsor and, to its knowledge, any of its contractors who will execute work under this Agreement:

a. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from federal, state or local ("public") transactions;

b. Have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for (i) fraud or commission of a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under Paragraph 8.b; and

d. Have not within the preceding three years had a public transaction terminated for cause or default.

9. The Non-Federal Sponsor will insure that projects involving collection of environmental data (measurements or information that describe environmental processes, location, or conditions; ecological or health effects and consequences; or the performance of environmental technology) must meet the American National Standard Specifications and

Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs, ANSI/ASQC E4-1004. "Quality System Documentation" includes a Quality Management Plan (QMP), a Quality Assurance Project Plan (QAPP), or such other documentation which demonstrates compliance with ANSI/ASQC E4-1994.

ARTICLE III - PROJECT COORDINATION TEAM

10. To provide for consistent and effective communication, the Non-Federal Sponsor and GLNPO, not later than 30 business days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. The Project Coordination Team shall meet regularly until the end of the Project period. GLNPO's Project Coordinator and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

11. GLNPO's Project Coordinator and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of Project progress and significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

12. Until Project completion, the Project Coordination Team shall generally oversee the Project including, but not necessarily limited to, matters related to design, remedial investigation and feasibility studies; plans and specifications; scheduling; real property, relocation, and removal requirements; real property acquisition; contract awards or modifications; contract costs; the application of and compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act for relocations; GLNPO's cost Projections; final inspection of the entire Project or functional portions of the Project; preparation of the management plan for proposed dredged or excavated material disposal; anticipated requirements for operating and maintaining the general navigation features; and other Project-related matters. The Project Coordination Team also shall generally oversee the coordination of Project schedules.

13. The Project Coordination Team may make recommendations to the Project Manager on Project-related matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. GLNPO in good faith shall consider the recommendations of the Project Coordination Team. GLNPO, having the legal authority and responsibility for the Project, may accept or reject, in whole or in part, the Project Coordination Team's recommendations.

ARTICLE IV - METHOD OF PAYMENT

14. As of the effective date of this Agreement, the Total Project Costs are projected at \$400,000 and the Non-Federal Sponsor's contribution required under Paragraph 5 is projected at \$140,000 including in-kind contributions. These amounts are subject to adjustment by GLNPO, after consultation and agreement by the non-Federal Sponsor.

15. The Non-Federal Sponsor shall provide in-kind services to the Project and a cash payment if necessary to the U.S. EPA as required by Paragraph 5 according to the provisions of this Paragraph. The payment shall be made in the manner outlined in Paragraph 19, below.

a. The Non-Federal Sponsor shall submit an itemized statement listing the In-kind contributions it anticipates incurring to complete the Project.

b. If at any time GLNPO determines that additional funds or in-kind contributions will be needed from the Non-Federal Sponsor to cover the non-federal proportionate share of Projected financial obligations for the Project during the current fiscal year, GLNPO shall notify the Non-Federal Sponsor in writing of the additional funds required and shall explain why they are required. The parties shall sign an amendment to this Agreement to increase the Total Project cost limit in this paragraph if all parties agree. The Non-Federal Sponsor, within 60 calendar days from receipt of the notice, shall make the additional required funds or in-kind contributions available by delivering a check payable in the manner described in Paragraph 19, below.

16. Before GLNPO incurs any financial obligation associated with additional work under Paragraph 5, and provided that the Non-Federal Sponsor has agreed to increase the Total Project Costs provided herein, the Non-Federal Sponsor shall pay the full amount of the financial obligation through any of the payment mechanisms specified in Paragraph 19. If GLNPO determines that the Non-Federal Sponsor must provide additional funds to meet such financial obligations, GLNPO shall notify the Non-Federal Sponsor in writing of the additional funds required and explain why they are required. The parties shall then sign a modification to this Agreement to increase the Total Project cost limit in Paragraph 14 if all parties agree. Within 30 calendar days after receipt of the notice, the Non-Federal Sponsor shall pay GLNPO the full amount of the additional required funds by delivering a check payable in the manner described in Paragraph 19, below.

17. Until GLNPO gives the Non-Federal Sponsor the results of the final accounting, GLNPO shall maintain current records of contributions provided by the parties, current projections of the Total Project Costs, and costs due to additional work under Paragraph 5.

18. Upon completion of the Project or termination of this Agreement before Project completion and upon resolution of all relevant proceedings, claims, and appeals, GLNPO shall conduct a final accounting, based primarily on the information collected by the Non-Federal Sponsor pursuant to Paragraph 4, and give the Non-Federal Sponsor the final accounting results. GLNPO may perform an interim accounting on its own or, if requested by the Non-Federal Sponsor.

a. The final accounting shall determine the total costs of the Project, each party's share of the Project, and each party's required share for the Project.

i. If the final accounting shows that the Non-Federal Sponsor's total contribution is less than its required share of the Total Project Costs, the Non-Federal Sponsor

shall, within 90 calendar days after receipt of written notice, pay the amount necessary to meet its required share by delivering a check payable in the manner described in Paragraph 19, below.

19. The Non-Federal Sponsor shall submit a check, made payable to the order of the "Treasurer, United States of America," to

Cincinnati Accounting Operations
U.S. Environmental Protection Agency - Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

The check shall contain a notation referencing a Budget Organization account number that GLNPO shall provide after this agreement is executed.

OR the Non-Federal Sponsor shall make an Electronic Fund Transfer (EFT) to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, N.Y. 10045

Field Tag 4200 of the Fedwire message is "D 68010727 Environmental Protection Agency" and shall contain a Budget Organization account number that GLNPO shall provide after this agreement is executed.

The Non-Federal Sponsor shall provide a copy of the check or EFT transmission to GLNPO to the person listed in Paragraph 36, below.

ARTICLE V - DISPUTE RESOLUTION

20. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this article are the exclusive mechanism to resolve disputes arising under or with respect to this Agreement.

21. Any dispute which arises under or with respect to this Agreement initially shall be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 business days from the time the dispute arises, unless extended by written Agreement of the parties to the dispute. The informal dispute period arises when the party not in dispute receives the other party's written notice of dispute.

22. Statements of Position.

a. If the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, the position advanced by GLNPO shall be binding unless, within 10

business days after the conclusion of the informal negotiations, the Non-Federal Sponsor invokes the formal dispute resolution procedures of this article by serving on GLNPO a written statement of position on the matter in dispute. The statement of position shall include, but is not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Non-Federal Sponsor.

b. Within 30 business days after receiving the Non-Federal Sponsor's statement of position, GLNPO shall serve on the Non-Federal Sponsor its statement of position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by GLNPO. Within 20 business days after receiving GLNPO's statement of position, the Non-Federal Sponsor may submit a reply.

c. GLNPO shall maintain an administrative record of the dispute that contains all statements of position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, GLNPO may allow submission of supplemental statements of position by the parties to the dispute.

d. The Director of GLNPO will issue a final administrative decision resolving the dispute based on the administrative record described above. This decision shall bind the Non-Federal Sponsor.

ARTICLE VI - SEVERABILITY CLAUSE

23. If a court issues an order that invalidates any provision of this Agreement, the parties shall remain bound to comply with all provisions of this Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

24. GLNPO and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence according to these procedures and for at least three years after completing the accounting for which the books, records, documents, or other evidence were subject. To the extent permitted under applicable federal laws and regulations, GLNPO and the Non-Federal Sponsor shall each allow the other to inspect the books, records, documents, or other evidence.

25. The parties agree that the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable federal laws and regulations, GLNPO shall give the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-federal audits performed pursuant to this Paragraph before GLNPO furnishes the Non-Federal Sponsor with the results of the final accounting shall be allocated according to the provisions of OMB Circulars

A-87 and A-133, and the costs that are allocated to the Project shall be included in Total Project Costs and shared according to the provisions of this Agreement.

26. In accordance with 31 U.S.C. § 7503, GLNPO may conduct audits in addition to any audit that the Non-Federal Sponsor must conduct under the Single Audit Act Amendments of 1996. The costs of GLNPO audits performed pursuant to this Paragraph before GLNPO furnishes the Non-Federal Sponsor with the results of the final accounting shall be included in the Total Project Costs, and shared according to the provisions of this Agreement.

ARTICLE VIII - FEDERAL LAWS AND REGULATIONS

27. In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and GLNPO agree to comply with all applicable federal laws and regulations, including, but not limited to:

a. Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. § 2000d); and all applicable federal labor standards requirements including, but not limited to 40 U.S.C. §§ 3141-3148 and 40 U.S.C. §§ 3701-3708 (revising, codifying and enacting without substantive change);

b. The provisions of the Davis-Bacon Act (formerly 40 U.S.C. § 276a *et seq.*);

c. The Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. § 327 *et seq.*), debarment and suspension requirements (40 C.F.R. Part 32);

d. The Copeland Anti-Kickback Act (formerly 40 U.S.C. § 276c) and the Endangered Species Act (16 U.S.C. §§ 1534 to 1544);

e. Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60-4 relating to federally-assisted construction contracts; and

f. Any statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, non-federal sponsor shall undertake good faith efforts in compliance with 40 C.F.R. § 31.36(e) to give opportunities to qualified Small Business Enterprises ("SBE"), Minority Business Enterprises ("MBE") and Women-Owned Business Enterprises ("WBE") to submit proposals and bids and provide services on contracts and subcontracts for services and supplies. The Non-Federal Sponsor shall submit a report of such efforts in a manner acceptable to GLNPO.

ARTICLE IX - RELATIONSHIP OF PARTIES

28. In the exercise of their respective rights and obligations under this Agreement, GLNPO and the Non-Federal Sponsor each act in an independent capacity, and neither is considered the officer, agent, or employee of the other.

29. In the exercise of their rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that Contractor.

ARTICLE X - OFFICIALS NOT TO BENEFIT

30. No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XI - TERMINATION OR SUSPENSION

31. If the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Director of GLNPO shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States, or is necessary to satisfy agreements with any other non-federal interests in connection with the Project.

32. If GLNPO does not receive annual appropriations sufficient to meet its share of scheduled expenditures for the Project for the then-current or upcoming fiscal year, GLNPO shall notify the Non-Federal Sponsor in writing, and either party may without penalty terminate this Agreement or suspend future performance under this Agreement. If either party suspends future performance pursuant to this Paragraph, the suspension shall remain in effect until GLNPO receives sufficient appropriations or until either GLNPO or the Non-Federal Sponsor terminates this Agreement, whichever occurs first.

33. If either party terminates this Agreement pursuant to this article, both parties shall conclude their activities relating to the Project and proceed to a final accounting pursuant to Paragraph 15.

34. Any termination of this Agreement or suspension of future performance under this Agreement shall not relieve the parties of liability for any obligation previously incurred. Interest shall accrue on any delinquent payment owed by the Non-Federal Sponsor at a rate, to be determined by the Secretary of the Treasury, equal to 150 per cent of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately before the payment became delinquent, or auctioned immediately before the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE XII -HISTORIC PRESERVATION

35. The Non-Federal Sponsor shall evaluate the Project's impact on historic property. The costs of identification, survey and evaluation of historic properties shall be included in Total Project Costs and shared according to this Agreement.

ARTICLE XIII - NOTICES

36. Unless otherwise specified here, any notice, request, demand or other communication required or permitted under this Agreement between the parties shall be in writing and addressed as follows:

to the Non-Federal Sponsor: John H. Moore, P.E.
City of Waukegan
City Hall
100 N. Martin Luther King Ave.
Waukegan, IL 60085

with a copy to Brian S. Grach
Corporation Counsel
Diver, Grach, Quade and Masini
111 N. County St.
Waukegan, IL 60085

to GLNPO: Scott Cieniawski
U.S. EPA, Region 5
GLNPO (G-17J)
77 West Jackson Blvd.
Chicago, IL 60604-3590

37. Either party may change its notice address provided in Paragraph 36 by written notice to the other party.

38. The addressee shall be deemed to have received any notice given pursuant to this Agreement at the earlier of the date it is actually received, or seven calendar days after it is mailed.

ARTICLE XIV - CONFIDENTIALITY

39. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XV - RESPONSIBLE PARTIES

40. If it is discovered through any investigation for hazardous substances or other means that CERCLA liability for hazardous substances addressed by the Project can be attributed to a responsible party, the Non-Federal Sponsor and the GLNPO shall provide prompt written notice to each other. The Non-Federal Sponsor and the GLNPO shall consult according to article V in an effort to ensure that responsible parties bear their fair share of clean up and response costs as defined in CERCLA. Implementation of the Project shall not relieve any third party from any liability that may arise under CERCLA.

ARTICLE XVI - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

41. This Agreement does not create any rights, confer any benefits, or relieve any liability, for any third person not party to this Agreement.

ARTICLE XVII - NON-LIABILITY OF OFFICERS AND EMPLOYEES

42. No officer, agent, consultant, or employee of the Non-Federal Sponsor or of GLNPO, may be charged personally, or held liable, under this Agreement because of any breach, attempted breach, or alleged breach of this Agreement.

43. This Agreement will become effective on the date the GLNPO representative signs this Agreement.

ARTICLE XVIII - MODIFICATION

44. This Project Agreement may be modified by mutual agreement of U.S. EPA and the Non-Federal Sponsor. Modifications shall be in writing and can significantly increase the scope or cost of the Project consistent with the requirements of the Great Lakes Legacy Act and its implementing regulations and guidance. Modifications shall be effective at the time they are signed by both U.S. EPA and the Non-Federal Sponsor.

ARTICLE XIX - AUTHORITY OF SIGNATORY TO BIND

45. Each undersigned representative of the Non-Federal Sponsor and GLNPO certifies that he or she is fully authorized to enter into the terms of this Agreement and to execute and legally bind such Party to this Agreement.

By: Richard Hyde
Richard Hyde
Mayor, City of Waukegan

By: Mary A. Gade
for Mary A. Gade
National Program Manager
Great Lakes National Program Office

Date June 6, 2007

Date: 6-22-07

List of Attachments:

1. Statement of Work
2. Attachment to Statement of Work